

Can a complaint be filed against a union under the Human Rights Code?

Yes. Unions are subject to the same provisions of the Code as are employers and landlords. If a qualified woman encounters unusual resistance when seeking membership in a male-dominated union, she may have grounds for complaint. For example, consistent rejection on the grounds of "no vacancy" may be open to question. Even attempts to discourage a woman from joining the union might constitute grounds for complaint.

What about employment agencies?

They, too, are subject to the provisions of the Code. This means that it is illegal for them to accept discriminatory job orders. If an agency informs a woman that they would be happy to place her in a particular job but the company does not wish to fill the job with a woman, she should contact the Commission.

If a woman finds that agency personnel press her into job areas – such as clerical – despite her expressed interest in other types of jobs, there may be grounds to question the agency's practices. Again this is a matter to take to the Commission.

Is every employer in Ontario subject to the provisions of the Code?

There are a few exceptions. Any industry which is regulated by the federal government is not subject to the Ontario Human Rights Code. Such industries include banking, broadcasting, telecommunications, inter-provincial and marine transportation.

It is a two-way street. And women can help to maximize the Code's effectiveness by knowing how to deal with employment-related discrimination. Here are some of the most common situations.

When applying for a job or promotion, how can a woman respond to an employer who claims that the work is too heavy, or that a woman would not like the work?

An employer cannot refuse to *consider* any person for a job or promotion – whether a man or woman, married or single, – if that person has the necessary qualifications for the work. If the employer insists that the person could not do the job for reasons of age, sex or marital status and the person files a complaint, the employer will be required to prove this contention during the Commission's investigation.

If such circumstances arise, there is little to be lost and possibly much to be gained by reminding the employer that under the Human Rights Code no *qualified* person may be denied a fair chance to be considered for a job. This means that a qualified woman cannot be judged unsuitable for a job on the *assumption* that women cannot perform the job. This is what is known as the merit principle of employment and it is embodied in the Human Rights Code.

If such a reminder to the employer is unproductive, contact the Human Rights Commission.

What should be done if a person is told by an employer or employment agency that a job has just been filled and later learns that this is not so?

If a woman has good reason to believe that this deception might be due to discrimination on any of the grounds prohibited by the Code, she should call the Commission promptly. They will be able to advise on how to proceed.

What about application forms and job interviews requesting personal information about matters such as family planning?

It is a violation of the Human Rights Code to request any information or act in such a way as to elicit information from an applicant which is to be used in a discriminatory way, and it is to be hoped that women would remind recruiters of this principle. However, faced with the reality of a job prospect, this is a decision that each woman must make herself. If she is refused the job, little is at stake in contacting the Commission concerning the offending practices.

Application forms present less of a direct conflict since the Human Rights Commission discourages enquiries about matters unrelated to the qualifications for the job. The Commission may be able to follow up on such violations without the necessity of a filed complaint.

How can a qualified woman prove that she has been passed over in favour of a man in a job application or promotion? Isn't it easy for an employer to discriminate by claiming the man had better personal qualifications?

It is important to understand that the onus is not on the individual who perceives the discrimination to substantiate the case. This is the responsibility of the Commission. For the complainant, only the perception of the discrimination is necessary in order to place a complaint.

When the Human Rights Commission looks into a complaint of sex discrimination in the hiring process, the officer does not limit the investigation to a paper comparison of the successful and the unsuccessful candidate. Many other aspects will be examined such as the company's pattern of recruitment or promotion, wage scales, and examination of the other employees' qualifications.

Therefore it is self-defeating to assume that a woman could not succeed with a complaint of discrimination in such situations. Given these circumstances, she should consult the Commission on the advisability of filing a complaint. At this initial contact there would be no necessity to reveal her identity.

What about sexual harassment on the job?

This may take the form of unsolicited sexual advances by a superior or employer which are imposed as a requirement of employment. If these circumstances occur, contact the Commission concerning the filing of a complaint.

Though this is a sensitive issue, a complainant is protected by the Code against further reprisals and any settlement would include an assurance that the woman's position must be protected.

The Women's Bureau is concerned that each and every woman be accorded access to equal opportunity in the work force.

Should a problem arise which does not fall within the Human Rights protections, the Bureau may be able to suggest alternative resources for assistance.

In the final analysis, the achievement of equal opportunity in employment for women will require that women themselves become knowledgeable about their rights in the work force.

The Women's Bureau recommends the following of their employment-related publications, available free of charge.

—Labour Legislation of Interest to Working Women.

—Pregnancy Leave in Ontario

—Labour Law in Action: Six Case Studies

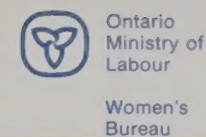
—The Job Search

—Your Rights as a Worker in Ontario

To obtain these publications, phone or write to:
The Women's Bureau
Ontario Ministry of Labour
400 University Avenue
Toronto, Ontario M7A 1T7
Telephone: 965-1537

To register a complaint, phone or write to:
Ontario Human Rights Commission
400 University Avenue
Toronto, Ontario M7A 1T7
Telephone: 965-6841

Regional offices are located in Hamilton, Kenora, Kingston, Kitchener, London, Ottawa, Sault Ste. Marie, St. Catharines, Sudbury, Thunder Bay, Timmins, Windsor.

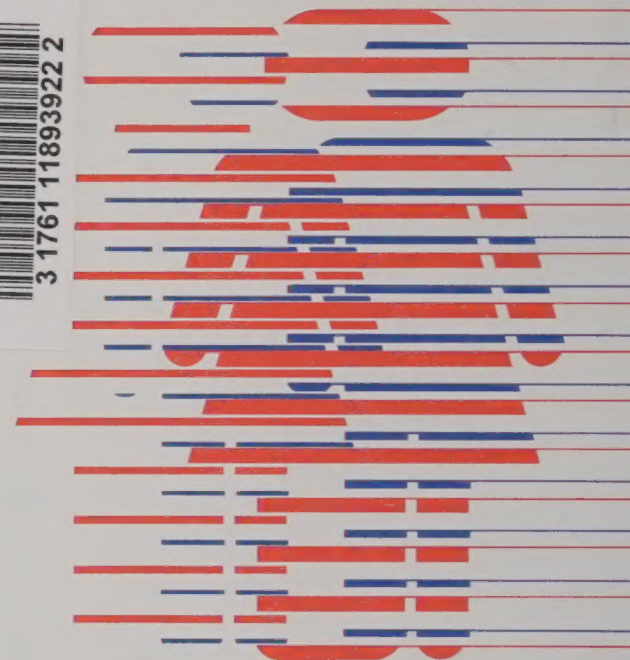


CA20N
L21
Z206

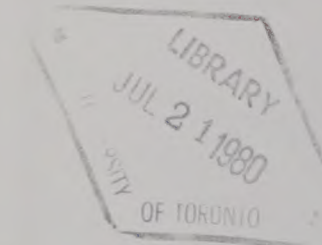
How to File a Complaint under
the Human Rights Code



Sex Discrimination
in Employment
Government
Publications



DEPOSITORY LIBRARY MATERIAL



How Does the Ontario Human Rights Code Protect Women?

In the area of employment the Human Rights Code says that a person's age, sex and marital status cannot be used as grounds for discrimination. This means that a woman cannot be denied a *job, training, promotion or transfer* simply because of her sex, marital status or age (if between 40 to 65 years old). Where terms and conditions of employment are concerned, such as equal access to overtime, or to transportation subsidized by the company, there can be no difference between men and women.

The Code applies also to housing accommodation, and to admittance into public places.

Other unacceptable grounds for discrimination under the Code include race, colour, creed and national origin.

How to recognize grounds for complaint under the Code.

Blatant discrimination is easily identifiable but more subtle forms are not always recognized as grounds for legitimate complaints. While a complaint must relate to what the Code covers, it is sometimes assumed that sex discrimination has not occurred unless a person has actually been told that she will not be hired or promoted simply because she is a woman. This is a narrow interpretation of the Code. Consider the illustration of a woman refused a job because of the age of her children; if the company employs men with young children, there may be grounds for complaint.

A simple rule of thumb to apply when considering whether the Code may have been violated is to ask yourself whether the circumstances would have been different if the roles were reversed, if the woman had been a man, if the married person had been single, if the 45-year-old had been 25, if the immigrant had been Canadian born.

Is the Human Rights Commission the FIRST place to go to with a complaint?

Not necessarily. There may be other steps that should be explored before the actual filing of a complaint. For example, if a woman has been denied the right to compete for a job promotion or perceives that she has been denied a promotion because of her sex, age, or marital status, it would normally be expected that she first take up the matter with appropriate supervisors. This may help to clarify the reasons why the problem occurred and may, in fact, lead to a resolution at this point. If this action proves unproductive and the complainant proceeds to the Commission, her complaint may be somewhat strengthened by virtue of having taken steps to try to correct the situation herself.

In unionized employment settings where matters such as training and promotion are governed by the collective agreement, it would normally be expected that a person use the grievance procedure to rectify a perceived discrimination which is covered by the collective agreement. However, this does not preclude the option of simultaneously filing a related complaint with the Human Rights Commission.

Regardless of how an individual elects to deal with a situation involving possible discrimination, it should be emphasized that the Human Rights Commission is always available for consultation at any point of difficulty.

What is involved in filing a complaint?

When

If discrimination is perceived, a complaint should be filed as soon as possible. Any delay can mean that details of the circumstances become vague, witnesses disappear and the case becomes more difficult to establish. Delay could also affect the settlement that might be expected – it might not be possible to secure an offer of a job at that point and alternative compensation will have to be considered.

How

This should be done in person, where possible, at the nearest office of the Human Rights Commission so that all necessary details are documented at the outset. If the complainant either does not speak English or is apprehensive about this initial step, a counsellor could accompany her to interpret. If it would be a serious hardship for the complainant to take time from work, appointments might be arranged after working hours. Otherwise, no appointment is necessary.

In rural locations where there is no access to a local office, the Commission will accept a written complaint. This should include all details of time, place and circumstances.

The Interview

A full and complete statement of the complaint is essential and must be signed by the complainant. Include all dates, names, addresses and telephone numbers of witnesses including anyone who may have been consulted in regard to the problem – for example, a supervisor on the job, or a telephone contact if applying for a job.

Be prepared to spend an hour or more at the initial interview.

The Investigation

This is an impartial inquiry to establish the facts of the case. As well as obtaining the employer's version of the complaint, it may involve interviewing of witnesses and co-workers, and examination of relevant documents such as application forms, pay logs, time cards, attendance records, personnel files, records of performance and comparative records.

It should be understood that the Commission's investigations are confidential. Although a company must be made aware of the nature of any complaint against it, such information as witnesses' statements or the contents of personnel records will not be revealed to either party.

The Settlement

The findings of any investigation must be reviewed with the complainant and any proposed settlement accepted by her.

If she feels unsure about making this important decision alone, she is entitled to have an advisor with her during this review.

If the complaint is substantiated, some settlement may be agreed upon, such as the offer of a previously denied job or promotion, or compensation for earnings lost.

If the complaint cannot be settled, the Commission must then determine whether to recommend to the Minister of Labour that a Board of Inquiry be appointed to adjudicate the case. If the facts do not support the complaint, the Commission recommends that it be dismissed.

Concerns about filing a complaint?

Many people are apprehensive of reprisals from the employer or landlord and therefore hesitate to lay a complaint. These concerns are understandable.

When a woman is weighing whether or not to file a complaint, she should consider the protections built into the Code to prevent the possibility of punitive actions against her. The Code specifically prohibits reprisals (intimidation, coercion, dismissal, threat of dismissal, demotion, reduction of wages, or any penalty relating to terms and conditions of employment) against a person who *has* made, or *may* make a complaint, or has cooperated in a investigation under the Code.

If someone is subjected to punitive treatment as a result of filing a complaint, it should be reported promptly to the Human Rights investigating officer. Often the Commission can deal with petty harassment informally but if the situation does not improve, a formal complaint of reprisal may be filed with the Commission against the offender. If the reprisals can be substantiated, the offender may be fined or ordered to take appropriate corrective action.

Making the Code Work for You

There are other features of the Code which may not have occurred to you. Here are some of the questions often asked.

Is it possible for one person to file a complaint on behalf of a group, including that person?

In some cases this is possible depending on the circumstances. For example, if four women within the same company are experiencing a problem that they believe is discrimination as defined by the Code, one woman may file a complaint with signed supporting statements from the other three. Alternatively, separate complaints from each person may be filed simultaneously, in which case they would be investigated jointly.

If such a set of circumstances arises, consult the Commission concerning the procedures to be followed.

Can a community worker file a complaint on behalf of another person?

Yes. If there are reasonable grounds for believing that discrimination has taken place, any person or organization may file a complaint on behalf of another. In such circumstances the Commission would normally require that the person on whose behalf the complaint is made, consents to the filing of the complaint.

Can the Human Rights Commission itself initiate a complaint?

Yes. Where the Commission is made aware that discriminatory practices are taking place, even if no specific complainant can be found, it has the authority under the Code to initiate a complaint against the offender.

Should circumstances arise where there are reasonable grounds for believing that discrimination is repeatedly practiced in a particular area, the matter should be brought to the attention of the Commission.